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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/145915

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 06, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Fond Du Lac County Department of Social Services in regard to Child Care, a hearing was held on January 18, 2013, at Fond Du Lac, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overpayment of \$1,404.60 from the Petitioner for child care benefits overissued during the period of December 4, 2011 – February 25, 2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Deb Bohlman

Fond Du Lac County Department of Social Services  
87 Vincent Street  
Fond Du Lac, WI 54935-4595

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.
2. Petitioner applied for Child Care benefits on or about July 31, 2011. Child Care was denied due to petitioner's unemployment. Exhibit 3.

3. Petitioner was employed with a [REDACTED] company operating in Milwaukee, Wisconsin commencing on September 27, 2011. Petitioner's eligibility for Child Care benefits began on or about September 28, 2011. *Id.* Electronic Case Comments note that petitioner was employed, at various times, by [REDACTED] [REDACTED] and [REDACTED]; there is also reference to self-employment and rental income. *Id.*
4. Electronic Case Comments note that petitioner was receiving full Unemployment Insurance benefits, and was paid 10 payments of \$363.00 each in January of 2012. The Petitioner did not report to the child care agency that he was unemployed.
5. On October 22, 2012, the agency issued a Child Care Overpayment Notice and worksheet notifying the Petitioner that the agency was seeking to recover child care benefits in the amount of \$1,404.60 that were overissued during the period of December 4, 2011 – February 25, 2012. The notice advised the Petitioner that the basis for the overpayment is the Petitioner's inadvertent household error in failing to attend appropriate W2 activity during the overpayment period.
6. On December 6, 2012, the Petitioner timely filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

Wis. Stat. § 49.155 authorizes the department to operate a child care subsidy for Wisconsin Works (W-2) recipients and working parents. The subsidy program is known as Wisconsin Shares. The Department of Children and Families has a *Wisconsin Shares Child Care Assistance Manual* (Manual) that provides the specific activities, policies and eligibility requirements (including a discussion of income limits and other non-financial requirements) to qualify for the program.

The purpose of the Wisconsin Shares Child Care program is to provide child care assistance for working low-income families; working foster parents, kinship care relatives providing care under a court order and receiving kinship care benefits, and subsidized guardians/interim caretakers in Milwaukee County; and for individuals who are preparing for employment through Wisconsin Works, Food Share Employment and Training Program, tribal Temporary Assistance for Needy Families (TANF), or are in high school and working on their high school diploma.

*Manual*, Section 1.1.1.

A parent<sup>1</sup> is eligible for child care services if he/she needs the care to:

Work in an unsubsidized job, including training provided by an employer during the hours of employment. *Manual*, § 1.5.3

or

Participate in a course of study at a technical college or participate in a course of study that would produce an employment skill as determined by the department if the county Human Services or other agency or its subcontracted eligibility determination agency determines that the course or courses would facilitate the individual to maintain employment. *Manual*, § 1.5.7.

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<sup>1</sup> The Wisconsin Shares Child Care Assistance Manual defines a "parent" as: A custodial or placement parent, or biological, adoptive, foster, or treatment foster parent, legal custodian, subsidized guardian or interim caretaker of a child under s. 48.62(5) Stats in Milwaukee County, Kinship Care Relative, or person acting in place of a parent. *Manual*, § 1.2.0.

Changes that may impact eligibility must be reported within 10 days of said change. *Manual*, § 1.15.1. Respondent noted that,

The change reporting requirement is listed on every Notice of Eligibility Child Care and every Child Care Authorization Information Notice. A Notice of Eligibility Child Care was sent 11/8/2011; Child Care Authorization Information Notices were sent 10/17/11, 1/30/2012, and 2/6/2012.

Exhibit 3.

The determination of the proper amount of hours to grant a Child Care applicant is dependent in large part on the hours that the applicant and his/her spouse are working, and therefore unavailable to provide child care. In this case, when petitioner was laid off, without obtaining a new job or enrolling in W-2 activities, he lost his eligibility for child care benefits. At the hearing, Petitioner did not dispute that he did not inform the agency within 10 days that his employment had ended, but noted that the error was indeed inadvertent. Notably, fault is not an element in determining liability for an overissuance of benefits. The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §3.11.7. As such, even if the petitioner was entirely blameless in creating the overpayment, the law mandates that the overpayment be recovered.

Based upon the foregoing, and the well-prepared documentation presented by the respondent (see, Exhibit 3), I must conclude that the agency correctly seeks to recover child care benefits for the period of December 4, 2011 – February 25, 2012. I have reviewed the agency's overpayment worksheet and conclude that the amount of overpaid benefits is accurate.

### **CONCLUSIONS OF LAW**

The agency properly seeks to recover an overissuance of child care benefits to the Petitioner in the amount of \$1,404.60 pertaining to the period of December 4, 2011 – February 25, 2012.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby is, dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 22nd day of March, 2013

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 22, 2013.

Fond Du Lac County Department of Social Services  
Public Assistance Collection Unit  
Child Care Fraud